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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20540

FILE: B-191443

DATE: May 23, 1978

MATTER OF: Westwood Pharmaceuticals Inc. -
reconsideration

DIGEST:

1. Notice given by contracting activity to protester that award--the possibility of which that party had protested to the activity--had been made, in lieu of a specific response to its protest, constitutes initial adverse agency action. Since protest was filed with our Office more than 10 working days after protester's receipt of such notice, finding in prior decision that protest was untimely and not for consideration is affirmed.
2. Fact that protester continued to pursue protest with contracting activity after receipt of initial adverse agency action does not affect 10-day requirement for timeliness of protest filed with our Office.

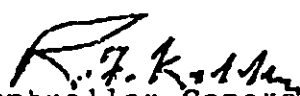
Westwood Pharmaceuticals Inc. (Westwood) requests reconsideration of our decision in Westwood Pharmaceuticals Inc., B-191443, March 31, 1978, declining to consider its protest as it was untimely filed with our Office. We found that Westwood had allowed over 5 months to elapse from the time of its October 4, 1977, protest letter to the contracting activity before filing a protest with our Office. We concluded that Westwood had taken no further action after filing its October 4 protest with the activity because of the Westwood statement in its protest letter to our Office that as of March 6, 1978, "there has been no response to our [October 4] protest * * *." Westwood advises in its request for reconsideration that, to the contrary, it had been in at least weekly contact with the Defense Personnel Support Center (DPSC), the contracting activity, during this 5-month period and that DPSC had continually assured Westwood that it was reviewing the matter.

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However, it now appears that Westwood originally protested any award to the eventual awardee by letter of September 16, 1977, to the agency on the same basis as alleged here. No reply was given to Westwood regarding this protest and, instead, Westwood was advised by DPSC on October 4 that the protested award had been made. We have held that where a bidder protests an award to an agency and is subsequently advised, in lieu of a specific response to its protest, that the protested award has been made, such notice constitutes initial adverse agency action on the protest. Petersen Enterprises, Inc., B-186705, July 21, 1976, 76-2 CPD 65.

Further, it is provided in our Bid Protest Procedures (see 4 C.F.R. § 20.2(a) (1977)) that a protest timely filed initially with the contracting activity must be filed with our Office within at least 10 working days of the "formal notification of or actual or constructive knowledge of initial adverse agency action * * *" in order to be considered on the merits by our Office. Such was not the case here where we received the Westwood protest over 5 months after the firm was notified of the protested award. While Westwood may have continued pursuing its protest with the agency after the initial (and controlling) adverse agency action, this does not affect the 10-day requirement for a timely filing with our Office. Technics, B-190984, March 9, 1978, 78-1 CPD 188.

Accordingly, our finding that the Westwood protest to our Office was untimely filed and was not therefore for consideration on the merits is affirmed.


Acting Comptroller General
of the United States